IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Criminal Appeal No.406 of 1999

Date of decision:02.03.2006.

State of H.P. …**Appellant.**

Versus

Jitender Kumar & Others. …**Respondents.**

Coram

The Hon'ble Mr.Justice K C Sood,J.

Whether approved for reporting ?[1]

For the Appellant: Mr.Ashok Chaudhary, Additional Advocate General.

For the Respondent:None.

K C SOOD,J.(Oral).

This appeal is directed against the judgment of acquittal recorded by the learned Additional Chief Judicial Magistrate, Dalhousie, District Chamba, H.P. dated 15th June, 1998.

It appears, the respondents, hereinafter referred to as the "accused", were tried for offences punishable under Sections 147, 323, 341 and 506 of the Indian Penal Code.

The prosecution case:

In February, 1992, Kafia Ram purchased a packet of cigarettes from accused Bhupinder alias Titu. Bhupinder over-charged. There was exchange of hot words between the two. On 24th February, 1992, Paras Ram, Om Parkash, the other brothers of the complainant Ram Ditta,

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement?***

went to Dramman allegedly for the purpose of shopping when all the accused gave beatings to them with fist blows and dandas. In the meanwhile, complainant Ram Ditta came to the spot. He was also given beatings by the accused. The complainant and his brothers were also threatened with dire consequences. The only independent witness Narain Singh did not support the prosecution. Inspite of the lengthy cross-examination by the Public Prosecutor, nothing could emerge which may implicate the accused with the offences charged.

Ram Ditta, Complainant (PW-1), says that it was 2/3 days before the incident that his brother purchased a packet of cigarettes from Titu who over-charged and lateron when his brothers had gone to Dramman he heard commotion, went there and found accused beating his brothers, namely, Paras Ram and Om Parkash. When he intervened, he too was being given beatings. According to him, Titu and some other persons were carrying dandas and the remaining accused were using their fist(s) to beat the brothers of the complainant. In cross-examination he says that he only identified Titu, Jitender and Sanju and no other accused. It is his evidence that no person came forward from the bazar to rescue them. But, Kafia Ram (PW-3), who allegedly purchased cigarettes 2/3 days prior to the incident, has given a different version. It is his evidence that when he complained about the overcharging by accused Titu, he was given beatings with dandas on his legs and sustained injuries. He became unconscious and returned back to his house and after 10/15 days when he

alongwith his brothers had gone to Dramman he was given beatings by the accused with dandas and hockeys. Now, this witness does not say that the occurrence occurred 2/3 days after the purchase of the packet of the cigarettes. According to him it was after 10/15 days of the purchase of the cigarettes. He also says that accused were carrying hockeys and dandas and gave beatings with hockeys and dandas.

A perusal of medical report shows that injuries found on all the persons were simple consisting of abrasion contusion which possibly could not have been caused by dandas or hockeys. The doctors who examined the injured are categorical that such injuries could be caused by fall. It was not the prosecution case that Kafia Ram was present at the place of occurrence at Dramman. Even his brother complainant Ram Ditta does not say so. Therefore, even the presence of Ram Ditta at the place of occurrence is doubtful.

Another witness Om Parkash (PW-4) has given a different version. It is his evidence that when he and Paras Ram reached Hatli, accused Bhupinder called them in his shop and told that he will set them right. When Paras Ram enquired why he was saying so, accused started beating them with dandas and fist blows. He also states that Narain Singh and Hans Raj saved them. But, Ram Ditta was categorical that none in the bazar intervened or rescued them. It was admitted by the complainant's brothers that their ***"Chacha"*** was posted as SHO in the Police Station at Shahpur, near the place of occurrence, therefore,

according to the learned trial Magistrate, false implication of accused could not entirely be ruled out because of the incident of the over-charging for the packet of cigarettes.

The acquittal recorded by the learned trial Magistrate cannot be said to be perverse or against the weight of the evidence on record.

No interference is called for.

The appeal is dismissed.

March 2, 2006 **(K C Sood)**
(aks) **Judge**